

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

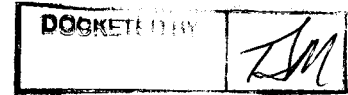
COMMISSIONERS

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BOB BURNS  
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2013 MAY 22 A 10:46  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**

MAY 22 2013



IN THE MATTER OF THE FORMAL  
COMPLAINT OF SWING FIRST GOLF LLC  
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-13-0053

**UPDATE TO COMPLAINT**

Swing First Golf LLC ("Swing First") hereby provides additional information concerning its Complaint against Johnson Utilities LLC, dba Johnson Utilities Company ("Utility"). Utility continues to withhold Effluent from Swing First. Utility also curtly rejected a reasonable offer to resolve irrigation supply issues with Swing First and the San Tan Heights HOA.

**I Utility Again Slashed Effluent Deliveries**

No sooner was May 20th's oral argument over, than Utility again slashed Effluent deliveries. Swing First requires approximately 700,000 gallons per day this time of year and Utility produces approximately 800,000 gallons per day. No water is being delivered to the HOA, so all production should have been available for delivery to Swing First. Yet, Utility delivered only a small fraction of available Effluent to Swing First. For the day ending on Tuesday morning, May 21, Utility delivered only 285,000 gallons. For the next day ending on Wednesday morning, May 22, Utility delivered a paltry 170,000 gallons!

Utility is clearly being vindictive, continuing to exploit its monopoly power. Utility's goal is obvious – to force Swing First to buy more expensive CAP Water and to pay an additional monthly minimum bill. Utility does not care if it destroys the golf course in the process.

1   **II    Utility Is Not Interested in Fairly Resolving Delivery Issues**

2           On Tuesday, May 21, 2013, counsel sent the following e-mail message to Jeff Crockett,  
3   Utility's counsel:<sup>1</sup>

4           *Jeff,*

5  
6           *I know that passions are running high, but we owe it to our clients to try to get this issue*  
7           *resolved if possible. I have an idea that might work for everyone, including the HOA.*

8  
9           *What if both customers agreed to take deliveries at a blended rate of \$0.74 per thousand*  
10          *gallons (the average of the effluent and CAP water rates)? This would be an increase for*  
11          *Swing First and a decrease for the HOA. Utility would charge only one minimum bill,*  
12          *based on a six-inch meter. Utility could deliver at its discretion, either CAP water or*  
13          *effluent.*

14  
15          *I think we could get Staff to support this and the Commission to approve this as a win for*  
16          *everyone.*

17  
18          *I have not raised this possible solution with Dave, but I would push hard for him to take*  
19          *it.*<sup>2</sup>

20  
21          *What do you think?*

22  
23          *Craig*

24           This was a very reasonable proposal that would have been a win for all parties and the  
25   Commission. Swing First would have paid approximately 17% more for its irrigation water, but  
26   would be assured of timely and continual irrigation deliveries. The HOA would have paid about  
27   12% less for its irrigation deliveries. Utility would have gained the flexibility to use its  
28   discretion to select Effluent or CAP Water, without materially affecting revenues. All parties,  
29   including Staff, Hearing Division, and the Commission, would have benefitted by resolving the  
30   largest issue in Swing First's Complaint without further litigation.

31           One would think that Utility would give Swing First's proposal serious consideration.  
32   Instead, Utility responded as follows:

33          *Craig,*

34          *I forwarded your e-mail to Johnson Utilities this morning and discussed it with*  
35          *the Company this afternoon. Johnson Utilities believes it is in the best interests of*  
36          *all of its customers that the Company adhere to the tariffed rates and charges for*  
37          *the type of water actually delivered. As a result, the Company cannot accept the*

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<sup>1</sup> Copy attached as Exhibit A.

<sup>2</sup> Mr. Ashton did agree to the offer.

1       *possible solution set forth in your e-mail.*

2       *Regards,*

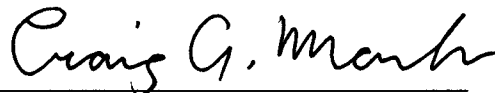
3       *Jeff*

4       There was no discussion at all. Instead, Utility arrogantly presumes to determine what is  
5 in the “best interest” of its two customers. With all due respect, it is the Commission, not Utility,  
6 that is supposed to determine what is in the best interest of the customers. Swing First clearly  
7 believes that the proposal was in its best interests. The HOA would very likely have agreed that  
8 a 12% rate reduction was in its best interests. It’s unfortunate that Utility would not allow the  
9 Commission to determine what is in the customers’ best interests.

10   **III     Conclusion**

11       Swing First again asks for the Commission’s help. Swing First cannot survive much  
12 longer on less than 25% of its Summer irrigation requirements. Utility will continue to withhold  
13 Effluent until it forces Swing First to accept CAP Water and pay far more for irrigation. Without  
14 immediate Commission action, that day will come very soon.

15       RESPECTFULLY SUBMITTED on May 22, 2013.

16  
17  
18         
19

20       Craig A. Marks  
21       Craig A. Marks, PLC  
22       10645 N. Tatum Blvd., Ste. 200-676  
23       Phoenix, Arizona 85028  
24       (480) 367-1956 (Direct)  
25       (480) 304-4821 (Fax)  
26       Craig.Marks@azbar.org  
27       Attorney for Swing First Golf LLC

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**Craig A. Marks**

## Craig Marks

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**From:** Crockett, Jeffrey W. <JCrockett@BHFS.com>  
**Sent:** Tuesday, May 21, 2013 4:15 PM  
**To:** 'Craig Marks'  
**Subject:** RE: Possible Resolution of Irrigation Issue

Craig,

I forwarded your e-mail to Johnson Utilities this morning and discussed it with the Company this afternoon. Johnson Utilities believes it is in the best interests of all of its customers that the Company adhere to the tariffed rates and charges for the type of water actually delivered. As a result, the Company cannot accept the possible solution set forth in your e-mail.

Regards,

Jeff

**Jeffrey W. Crockett**

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One East Washington Street, Suite 2400  
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**From:** Craig Marks [<mailto:craig.marks@azbar.org>]  
**Sent:** Tuesday, May 21, 2013 8:22 AM  
**To:** Crockett, Jeffrey W.  
**Subject:** Possible Resolution of Irrigation Issue

Jeff,

I know that passions are running high, but we owe it to our clients to try to get this issue resolved if possible. I have an idea that might work for everyone, including the HOA.

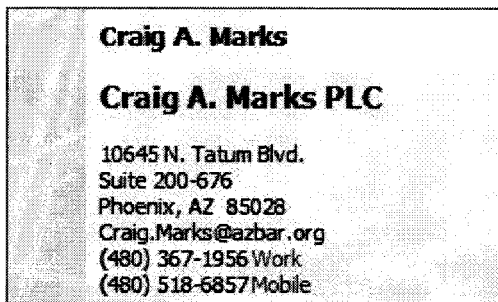
What if both customers agreed to take deliveries at a blended rate of \$0.74 per thousand gallons (the average of the effluent and CAP water rates)? This would be an increase for Swing First and a decrease for the HOA. Utility would charge only one minimum bill, based on a six-inch meter. Utility could deliver at its discretion, either CAP water or effluent.

I think we could get Staff to support this and the Commission to approve this as a win for everyone.

I have not raised this possible solution with Dave, but I would push hard for him to take it.

What do you think?

Craig



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